Ex Parte Filing

Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

Re: ***Toll Free Service Access Codes*, CC Docket No. 95-155**

Dear Ms. Dortch,

On June 28, 2013 the SMS/800, Inc. filed an Ex Parte with the FCC regarding the release of the 844 toll free code (**CC docket No. 95-155).** In the letter, the SMS/800 Inc. recommends that the 844 NPA code opening be accelerated from its previous recommended date of February 15, 2014 to December 7, 2013.

The SMS/800 letter states that the previous allocation method used for the 855 release is the only allocation method that the platform is capable of implementing at this time, and that:

> *'Any change to the current allocation method, including but not limited to determining consolidation of RespOrg identifications across affiliates would require what we expect to be overly burdensome financial investment and operational delay, as well as the need to make changes to the tariff – all of which would not be in place for the newly recommended 844 code opening date.'*

The 844 Release Coalition (the "Coalition")[1] hereby submits comments in response to the above captioned Ex Parte of SMS/800 Inc. As previously set forth in its Comments filed May 6, 2013, the Coalition respectfully submits that the number allocation method the Bureau adopted to open the 855 toll free code should be modified for the 844 and future toll free code openings to prohibit unfair and discriminatory practices which have tainted the allocation of 855 toll free numbers.

Specifically, the Coalition urges the Commission to take the following actions prior to the opening of the 844 toll free code:

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[1]The 844 Release Coalition is comprised of Responsible Organizations ("RespOrgs"). The members of the Coalition are 24-7-365 INC., 365 Wireless LLC, 800 Response Information Services, LLC, Airespring Inc, Allstate Communications Inc., Astro Companies LLC, ATL Communications, Beehive Telephone Inc., Bell Canada, CallSource, Capital Management LLC, CapitalSource Bank, Cbeyond Inc, Contact Solutions, Cooperative Communications, CoSpeed LLC, Direct Results, Elite Brands, EMERGENCY COMMUNICATIONS NETWORK LLC, Empire One Telecommunications Inc., Express Communications, Fractel LLC, Grande Communications Networks Inc, Iowa Communications Network (IOW01), iProbe Multilingual Solutions Inc., Junction Networks, K.T Communications Inc., LeaseHawk LLC, Lightyear Network Solutions LLC, MetTel, Nation Wide 800, National Comtel Network Inc., Netcarrier Telecom, Network Telephone Services Inc., New Network, Pac-West Telecomm Inc., Point Telecom Inc, Shepher Corporation, Sigecom, Soutine Enterprises, TalkPath LLC, TCO NETWORK INC, Telekenex, Telengy LLC, Telescan Inc., TeleServices Inc., THE Telco, Threshold Communications Inc., Unipoint Services Inc, VBI, VCOM Solutions Inc., Voce Telecom, VOLOLLC, Voxbeam Telecommunications Inc., VPT Inc., Warning Communications Inc., Wiphonica Technologies Inc..

1. Direct SMS/800, to amend its tariff to prohibit the participation by multiple Responsible Organizations ("RespOrgs") affiliated by common ownership and control[2] from reserving or otherwise participating in the allocation of toll free numbers during the 844 code release;
2. Prohibit Database Management Services, Inc., the Toll Free Number Administrator ("DSMI") from assigning toll free numbers to any RespOrg affiliated by common ownership with another RespOrg which seeks, or has received, toll free numbers during the 844 code release; and
3. Direct each RespOrg to file an affidavit with the Commission and SMS/800, subject to perjury sanctions, disclosing any common ownership relationship with another RespOrg.

In its Order Dated September 30, 2010 (Docket No. 95-155, **See Attachment A)**, the Wireline Competition Bureau "established an allocation method for release of the 855 toll free code that <u>will help ensure an efficient and equitable distribution of these numbers at the code's opening</u>."

This order also directed DSMI to "limit each RespOrg to one hundred 855 numbers per day for the first 30 days that the 855 code is opened." According to a footnote in the order, "RespOrgs are entities that are certified by DSMI to access the SMS/800 database." The order noted that "The daily allocation scheme is necessary to help prevent this activity and ensure a fair allocation of 855 numbers to all RespOrgs and, in turn, to all toll free subscribers."

The order also stated that

> *'We find that the most equitable and practical allocation scheme is to impose a daily number reservation limit on each RespOrg for the first 30 days of the 855 code opening. Such an allocation scheme gives all RespOrgs, regardless of their size and connectivity to the SMS/800 database, an equal opportunity to obtain 855 numbers when the new code opens. Daily allocation of toll free numbers is something DSMI has implemented in the past and can implement with the 855 code without engaging in software modifications.'*

The order goes on to state, "Moreover, we find that a limit of one hundred 855 number per day per RespOrg is a reasonable limit that affords all RespOrgs, regardless of their size and connectivity, an opportunity to reserve their most desired 855 vanity numbers." The order ends with, "We conclude that a week is sufficient time for DSMI to notify RespOrgs of our allocation scheme and allow them to make any necessary network and administrative preparations."

The 844 Release Coalition does not take issue with the Commission's September 2010 order. Our request for relief is directed at the manner in which the order was implemented. Using **RespOrg IDs** as a surrogate for **RespOrgs** violated the Commission's order because it did not

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[2] SMS/800 itself recognizes the fact that several RespOrgs are under common ownership and control creating a need to identify such relationships. It has recently developed a plan to expand the control of SMS/800 Inc. from the BOC's alone to the broader toll free industry. A critical element of that plan is a mechanism for identifying companies with common ownership and control over multiple RespOrg entities, and treating all such related entities as a single company for the purposes of voting for Board Members and representation as SMS/800 Inc. member companies. See **Attachment B** hereto (April 25, 3013 letter from Thomas FitzGerald, with attached Designation of Executive Contract and Declaration of Affiliated Companies). The Affiliated Companies Declarations are on file with SMS/800.

account for the fact that some RespOrgs have multiple RespOrg IDs. Some of these situations are readily apparent from a review of the list of 427 RespOrg IDs. For example, Verizon has seven RespOrg IDs; AT&T has eight, and Century Link has three. While these figures are beyond question, there is also evidence, such as the appearance on the list of identical contact names for different RespOrgs, that there are other affiliations among the RespOrgs that will only be uncovered through further examination such as the Coalition's proposal that each RespOrg be required to file an affidavit disclosing its affiliate relationships.

Lack of Financial Burden

During the July 3, 2013 SMS/800 Number Administration Committee (SNAC) call, J.T. Ambrosi of SMS/800, Inc. indicated that the cost to make the changes necessary to limit companies with affiliated entities to a single daily allocation would be "in the millions," a figure that could only be based on implementing a comprehensive and integrated modification to the existing application framework, using fully burdened direct and indirect costs. However, in the experience of information services executives and software developers affiliated with the 844 Coalition, who for years have operated complex information systems and telecommunications infrastructure in private industry, there are bound to be simpler and more pragmatic approaches costing orders of magnitude less.

For example, since the SMS/800 platform is already capable of limiting daily reservations for each Entity, it would be sufficient to write a short program script, which would be run at the start of each day during the new code release, which sets the limit to "100" for a lead Entity and zero for affiliated Entities.

This approach would certainly cost less than $50,000, which is less than a penny for each 844 number to be released. Considering that RespOrgs currently pay almost ten cents **per month** for each number allocated to them in the SMS/800 Database, the costs involved are well below the value to the industry and the consumers they serve of a system which will assure an equitable and legal allocation.

However, even the cost to implement a comprehensive system change should be much less than $500,000. There are two SMS documents which strongly suggest that the software currently exists to set limits on 844 reservations for individual RespOrgs:

1. In a letter dated April 6, *2010* from Michael Wade of DSMI **(See Attachment C – Toll Free Number Exhaust)**, it is stated that,

> *'We expect, by early July of this year, to have a capability in place to allow for a table driven number reservation allocation system. The system will be based on a table that contains an entry for each and every Responsible Organization (RespOrg), at the "Entity" Level, which indicates the maximum allowable quantity of Toll Free numbers the various sub-RespOrgs associated with that Entity can reserve in any given calendar week. The entries can be based on whatever mechanism you specify when requesting that we implement such an allocation system, assuming of course that either you make the entry calculations or that we have sufficient data to make the calculations ourselves. For example, the entries could be:*

a. *A uniform amount per Entity;*
b. *An amount based on the market size of the Entity, presumable driven by the quantity of "working" numbers within the system as of a specified date;*
c. *Some combination; allocating every Entity a base quantity, with an additional quantity assigned based on market size / share; or*
d. *Another mechanism as defined by you and the Commission staff.'*

Even if, for some reason the functionality was not implemented in 2010, it is difficult to understand how the SMS/800 could have planned to implement it in less than three months in 2010, and can claim, in 2013, that they cannot implement it in five to seven months, and that the cost would be prohibitive.

This same letter also states that, "Once an Entity has exceeded its allowed limit for a given week that RespOrg, as well as all of its sub-RespOrgs, would be blocked from making any additional Toll Free Reservations until the start of the next week." In addition, the letter states:

> *'Please let me remind you that when the Commission last ordered such an allocation system to be put in place, prior to the opening of the 888 code, you also required a ban on new RespOrg Entities. The purpose of the ban was to block new entrants from consuming numbers from the limited resource of available numbers, as well as to block existing Entities from forming new RespOrgs simply to increase their access to the allocation pool. You may want to consider such an option along with considering the benefits / consequences of implementing an allocation system as discussed above.'*

2. There is another document on the SMS/800 Website entitled SMS/800 System and Screen Requirements for NPA 844 Support (see **Attachment D**), which indicates that the features referenced in Mr. Wade's letter have been implemented: a. Page 10 of the document "SMS/800 System Requirements for NPA 844 Support", shows the Code Opening Reservation Allocation Limit is set by "Entity," (see top left hand corner). Entity is defined by the SMS/800 System as the first two letters in a RespOrg ID. (not to be confused with user ID); b. The "Manual Allocation", as described on page 12 (middle of the screen), is the "quantity of Toll Free numbers that the **retrieved entity** is allowed to reserve this Reporting Period when Number Allocation is "on", provided Manual Override is "On." c. Also on page 12, the "Manual Allocation" field is a required text field that is "editable only by authorized system administrators." This administrative approach to the problem would not require any programming resources, and the associated costs would be trivial.

On its face, the documents and descriptions of the WRA (Reservation Allocation) screens contained therein support the Coalition's understanding – namely, that the functionality described therein, coupled with the Designations of Affiliated Companies through affidavits, would easily permit the system to restrict the primary entity code to 100 numbers per day (and affiliates to zero). This would prevent affiliated companies from reserving more than one hundred 844 numbers (in aggregate) per day (see **Attachment E**).

Alternative Approach
Should the Commission decide for any reason that the preceding approach is not workable, there

is an alternative approach to addressing the discrimination which results from the use of Entity IDs, which would not entail any Information System resource. The Commission should:

a. Require affidavits from every RespOrg that wants to participate in the 844 "pre-release" program (100 per day for a month) – affidavits of affiliated companies must identify the Primary affiliate which will be allocated 100 numbers per day)[3].

b. Prohibit Affiliates from separately participating in the "pre-release" program.

c. Require SMS to manually set allocations at zero for (a) RespOrgs who do not submit an affidavit; and (b) affiliates other than entities designated as the Primary affiliate.

d. For a period extending 30-60 days after the "pre-release" program, permit affiliate RespOrgs to transfer 844 numbers to their affiliates and/or their affiliates' customers (limited waiver of the rule on transfers). To assure that the system is not abused, the Primary affiliates could be required to report all such assignments/ports to the Commission.

e. State its intention to impose heavy forfeitures on any company violating the Affiliate restrictions.

f. Direct the SMS/800 to check the records of RespOrgs not authorized to participate in the "pre-release" on a **daily basis** and report to it violations of the Commission's order.

There will be details to be worked out, but there is adequate time to develop a system which will produce a much more equitable outcome as compared to the system SMT is advocating. That system, which was used for the 855 allocation, was clearly inequitable and discriminatory to the extent that every day RespOrgs with multiple IDs (including the SMT's owners) were entitled to reserve up to five or six times as many numbers as other RespOrgs.)

Timing

The SMS/800 Inc. claims that necessary modifications cannot be made in the time available. Several software experts whom we have consulted have expressed disbelief that it is anything but a simple and quick project.

While the programming and user interface seems to already exist, as previously suggested there are also options available to implement the necessary procedures on a manual basis. To suggest that the planning and design of these procedures could not be done with five months lead-time draws into question either the capabilities of the SMS/800, or the willingness of the management

[3]The Commission has rules for Affiliates designed to prohibit companies from gaining unfair advantage by avoiding compliance with the intent of the law. The SMT has already implemented a process for voting in SMS/800, Inc Board Members (and has reported that 55-60% have already responded), thereby acknowledging that in matters of fairness equity which impact a broad spectrum of RespOrgs, such a method for aggregating Affiliated entities is warranted. The Commission could facilitate implementation of this approach by clarifying its "100 per RespOrg" rule as requiring that affiliates not be considered to be separate RespOrgs.

and staff of SMS/800, SMT and DSMI, to comply with reasonable Commission directives required to comply with the non-discrimination requirements of the law.

FCC Rule Changes
There should be no need for an FCC Rule change for implementing these short-term modifications to the code opening process. As noted above, all that is necessary at this time is a finding that the use of RespOrg IDs as a surrogate for RespOrgs violates the Commission's 2010 order, and that an effective identification of affiliate relationships, and limitation of the allocation to one entity within an affiliated group would comply with the 2010 Order.

Tariff Changes
Tariff changes are typically filed on 30 to 60 days notice, a time period which would easily accommodate the time available between now and the 844 code opening. Furthermore, while a tariff change addressing the opening of 844 and all subsequent codes is desirable, it should be noted that compliance with the FCC Order, which resulted in reservation limits for the 855 code opening, was implemented by SMS/800 on very short order, with the Commission specifically finding that one week was adequate notice to RespOrgs, and absent any changes to the SMS/800, Inc. tariff.

Conflict of Interest Issue
The SMS/800, Inc. is an entity that is owned and managed by the (BOC) Bell Operating Companies (AT&T, Verizon and Century Link). Based on a cursory examination of the SMS/800 list of RespOrg IDs, these three companies control at least 18 separate RespOrg codes. Each of these companies stands to benefit and to secure an advantage over other RespOrgs if the Coalition's request is denied.

The Coalition has no information as to whether this apparent conflict of interest has affected the SMS/800, Inc.'s position on this issue, but the Commission needs to recognize and take into account that SMS/800, Inc. does not appear before the Commission as a disinterested party. At the least, there should be a strong burden of proof on the SMS/800 Inc. to demonstrate the costs, and implementation burden which they have claimed, and the Commission should require affidavits from senior technical staff that fully support any claims which have been made in ex parte presentations. Such affidavits should contain unambiguous representations that there is no practical way of developing and implementing a solution in the available time frame, not just that some solutions would be expensive and time-consuming. There are always solutions that are inadequate; the challenge for professionals is to find one that meets time and budget constraints. As noted above, the software experts with whom the Coalition has consulted have expressed disbelief at the claims contained in the SMS/800 ex parte presentation.

At the very least, the owners of the SMS/800 Inc. (BOC), recognizing their unique position, should be asked to file affidavit, and to agree to avoid using multiple RespOrg IDs in the manner outlined above so as to remove any opportunity for them to benefit from the discriminatory situation that resulted from the use of RespOrg IDs in the release of the 855 code. Placing the SMS/800 owners in the same position as the Coalition members who have only one RespOrg ID code could provide a powerful incentive to the development of creative approaches to solving the problem at hand in the five to seven months available.

Conclusion
In closing, there appears to be agreement between the 844 Release Coalition and SMS/800 Inc. that the existence of affiliates should not entitle a company to a competitive advantage. The difference of opinion relates to whether the time and resources exist to institute procedures prohibiting arbitrary discrimination, yet there is broad and compelling evidence to suggest that there is adequate time to implement the Coalition's proposals for a non-discriminatory release with only modest budgetary requirements.

Statements made during a recent meeting with the SNAC, representatives of SMS/800, Inc., and DSMI indicated that they are not adverse to or biased against the Coalition's methodology, rather, they don't want to incur the cost or administrative burden it would entail. It appears that we have a situation where there is agreement in principal, and the Coalition believes strongly that where there is consensus of *will* there is very likely to be a *way* to accomplish the task.

The Coalition would also like to note that J.T. Ambrosi of SMS/800 indicated that the Commission had asked SMS/800 to meet with representatives of the 844 Release Coalition to try to reach agreement on the issues related to the code release. They have expressed a willingness to convene that meeting after first reviewing this filing. The Coalition is open to such a meeting, which we tentatively expect to be convened during the week of July 15th.

The 844 Release Coalition also stands ready to meet directly with Commission staff to address any questions they might have.

Respectfully submitted,

THE 844 RELEASE COALITION

By: David Greenhaus/HW

July 12, 2013

Cc: 844 Release Coalition Members
SMS/800, Inc
A. Stevens
H. Hendrickson
M.Sclater

Attachment Table

Attachments	Description
Attachment A	Wireline Competition Bureau Order September 30, 2010
Attachment B	Executive Contact – Letter from Tom Fitzgerald
Attachment C	Designation of Affiliated Companies
Attachment D	SMS_800 System Requirements for 844 NPA
Attachment E	Proposal for limiting affiliated company reservations using current SMS/800 program capabilities